

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVON MARQUEZ THOMPSON,

Defendant-Appellant.

UNPUBLISHED

October 18, 2011

No. 299408

Washtenaw Circuit Court

LC No. 09-001151-FC

Before: M. J. KELLY, P.J., and FITZGERALD and WHITBECK, JJ.

PER CURIAM.

A jury convicted defendant of assault with intent to commit murder, MCL 750.83, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to a prison term of 20 to 40 for the assault conviction and to a two-year consecutive term for the felony-firearm conviction. Defendant appeals as of right. We affirm.

This case arises from the shooting of Veloise Cook. On the night of June 10, 2009, Cook caught defendant attempting to break into the home of Cook's cousin. As Cook and defendant argued, defendant drew a handgun but no shots were fired. Two days later, defendant and Cook got into a verbal argument during which defendant threatened to kill Cook. Shortly thereafter, defendant got into another altercation with Cook and again threatened to kill her. Defendant then drew a handgun and shot Cook three times. The third shot was aimed at Cook's head, but she was able to raise her arm and block the bullet.

Defendant argues that the prosecutor failed to present sufficient evidence to support a finding that defendant intended to kill Cook. We disagree.

When reviewing the sufficiency of the evidence, this Court "must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

To convict a defendant of assault with intent to murder, the prosecutor must prove the following three elements: "(1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder." *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). Circumstantial evidence and the reasonable inferences that arise therefrom can form satisfactory proof of the elements of the crime. *Id.* "The intent to kill may be proved

by inference from any facts in evidence.” *Id.* Because of the difficulty in proving an actor’s state of mind, minimal circumstantial evidence is sufficient. *Id.* The jury may infer defendant’s intent from his statements and conduct before the assault, or his use of a dangerous weapon. *People v Dumas*, 454 Mich 390, 403; 563 NW2d 31 (1997).

Viewing the evidence in the light most favorable to the prosecution, there was sufficient evidence for a rational jury to find that defendant had an actual intent to kill Cook. *Wolfe*, 440 Mich at 515. The prosecutor presented evidence that defendant drew a gun on Cook and threatened to kill her. Defendant subsequently shot Cook three times with a handgun, with the third shot being aimed at Cook’s head as she lay helpless on the ground. Given this evidence, a reasonable juror could infer that defendant had the actual intent to kill Cook. *Dumas*, 454 Mich at 403.

Affirmed.

/s/ Michael J. Kelly
/s/ E. Thomas Fitzgerald
/s/ William C. Whitbeck